

REMARKS/ARGUMENTS

Claims 5-7, 10-30, 32-34, and 38-41 are pending. Claim 30 has been amended. Claims 1-4, 8-9, 31, and 35-37 have been Canceled. Claims 10-14, 16-29, 38 and 39 have been Withdrawn as non-elected Method claims of the Restriction Requirement with the proviso that withdrawn claims can be rejoined if the elected composition claims are allowed and the method claims contain all the limitations of the composition claims.

Applicant respectfully requests the entrance of the amendments to the claims. The claims have been amended to claim more precisely the disclosed invention. The amendments have not been made to narrow the claims for patentability.

Finality of Office Action

The Applicants request the Examiner to reconsider the finality of the current Office Action. The Rejection appears to be made Final in error.

The Examiner has stated "Applicant's amendment necessitated the new grounds of rejection presented in this Office action" as his reason for making the Rejection Final. However, the only amendments to the sole independent claim under examination was to clarify that the "composition" was a "medicament" and it was "ingestible".

The First Office Action cited only Prior Art disclosing cosmetics, which were not part of the disclosed invention. A reading of the full set of claims, which contained "methods of use" and "composition" claims, shows that the disclosed invention is a product to relieve medical conditions. The "method of use" claims were to the application of this product and the "composition" claims were to the product used in the methods.

The Applicants realize that the Examiner is required to give the claims their widest scope, so even though cosmetics were not part of the disclosed invention, cosmetics could have read on the claims. Therefore, the claims were amended to clarify that the composition was ingestible and the preamble was amended to clarify it was a medicament.

Additionally, the Applicants expected the Examiner to reject each claim on all available valid grounds and the rejections would be based on Prior Art that disclosed the "heart" of the invention. MPEP 707.07(g) states that "Piecemeal Examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available".

The Applicants' amended claims defeated all the Prior Art references cited by the Examiner, so the application should have been in condition for allowance. Now the Examiner has cited new Prior Art and thus, the Office Action should be a Non-Final Rejection to allow applicants an opportunity to amend the claims or argue against the cited Prior Art.

Applicants respectfully request the Examiner's reconsideration of the Finality of the current Office Action and make it a Non-Final Rejection as is appropriate for this stage of prosecution.

35 USC § 102(b) Rejections

Examiner has rejected Claims 5-9, 30-37, 40, and 41 under 35 U.S.C. 102(b) as being anticipated by Alaux et al. (col. 8, lines 55-end), Levy et al. (ex. 3), Kapadia et al. (col. 7, lines 55-65), JP 362132824 (abstract), or JP 2001114628 (abstract).

Examiner has stated that each of the references teaches an oral composition containing an annatto extract (*Bixa orellana*). Examiner stated: "It is inherent to the composition that geranyl geraniols and tocotrienols are in the annatto extract as noted by applicants in their own specification, see page 11. The specifically claimed geranyl geraniols and tocotrienols are inherently in the annatto compositions since the geranyl geraniols and tocotrienols are derived from the annatto extract. The different isomer forms and amounts of geranyl geraniols are inherent to the annatto extract (*Bixa orellana*)."

Applicants have canceled claims 8, 9, 31, and 35-37 and amended Claim 30, the independent claim, to more clearly claim the disclosed invention. Claim 30 clarifies that the "ingestible composition" is an "ingestible annatto extract composition" that contains a "purified geranyl geraniol essentially free of tocotrienols." Applicants request that the Examiner reconsider the rejection in light of the amendments.

The cited Prior Art references of Alaux et al., Levy et al., Kapadia et al., JP362132824 and JP 2001114628 do not disclose an "annatto extract composition" from a "byproduct solution of *Bixa orellana* seed components". Applicants have defined these terms as follows:

[0082] A "byproduct solution of Bixa orellana seed components" is defined herein as a solution derived from Bixa orellana seed components having a concentration of annatto colorant significantly reduced from that of Bixa orellana seeds themselves. Other

common terms for byproduct solution used for commercial products include: oil-soluble annatto color or annatto oil. Generally, the concentration of annatto colorant, which is defined as bixins and other carotenoids, chemically modified, altered or esterified, in byproduct solution of Bixa orellana seed is less than about two percent, by weight, such as between about 0.05 weight percent and about 2.0 weight percent.

[0083] Annatto extract composition (AEC) typically contains cis and trans isomers of geranyl geraniol (GG) and tocopherol-free tocotrienols (T3) that are essentially delta and gamma isomer forms. Geranyl geraniols belong to a class of terpenoid, more specifically, diterpene isoprenoids containing four isoprene units. The GG may be all in the trans isomer form, or contain one or more of cis isomer forms, both of which are endogenous nutrients; however, they are not vitamins in the classical sense. Both cis and trans GG become substrates for many branch-point reactions needed in the syntheses of downstream isoprenoid and distal protein products

Alaux et al. discloses the bixin colorant from annatto seeds called “yellow cake”. Levy et al. discloses the use of the entire annatto seed without removal of the bixin colorant. Kapadia et al. discloses the bixin colorant from annatto seeds called “yellow cake”. JP362132824 discloses a chemical obtained from the leaves of *Bixa orellana*. JP 2001114628 discloses the bixin colorant from annatto seeds called “yellow cake”.

None of the cited Prior Art disclose a purified geranyl geraniol essentially free of tocotrienols from a byproduct solution of *Bixa orellana* seed component. Applicants respectfully ask for the withdrawal of this 102(b) rejection, and allowance of Claim 30 and its dependent claims 5-7, 15, 32-34, & 40-41.

35 USC § 103(a) Rejections

Examiner has rejected Claims 5-9, 15, 30-37, and 40-41 under 35 U.S.C. 103(a) as being unpatentable over Alaux et al. (col. 8, lines 55-end), Levy et al. (ex. 3), Kapadia et al. (col. 7, lines 55-65), JR 362132824 (abstract), or JR 2001114628 (abstract) taken with JP 62123113 (abstract), GB 2178662 (page 2, lines 10-15) or WO 89/01740 (claims).

Applicants have canceled claims 8, 9, 31, and 35-37 and amended Claim 30, the independent claim, to more clearly claim the disclosed invention. The discussion above shows how the claims have been amended to avoid the Prior Art cited for the 35 USC § 102(b) rejection. The cited Prior Art of JP 62123113, GB 2178662 and WO 89/01740 are insufficient to sustain a 35 USC § 103(a) Rejection without the availability of the 35 USC § 102(b) Prior Art.

Applicants respectfully ask for the withdrawal of this 103(a) rejection, and allowance of Claim 30 and its dependent claims 5-7, 15, 32-34, & 40-41.

Conclusion

This Response to a Final Rejection is within 3-months of the mailing date and no fees are believed due. However, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to credit card information on record.

The claims have been amended to claim more precisely the disclosed invention. No new matter has been added by the amendments to the claims.

In view of Applicant's remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt examination and allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Date July 18, 2006

/KOH/
Kirk Hahn
Agent of Record
Registration No. 51,763
Customer Number 038051
714-544-2934